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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1914.
No. 715.

RAMAPO WATER COMPANY,

against

CITY OF NEW YORK AND CHARLES STRAUSS, CHARLES H. CHADWICK AND JOHN F. GALVIN, individually and as Members of the Board of Water Supply of the City of New York,

Appellees.

APPEAL FROM DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

BRIEF FOR APPELLEES.

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CONTENTS.

CASES CITED.

Supreme Court of the United States.

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AGAINST

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BRIEF FOR APPELLEES.

Statement.

This is an appeal from a decree of the District Court of the United States for the Southern District of New York dismissing a bill in equity for want of jurisdiction.

The City of New York since the beginning of the year 1907 has been engaged in the acquisition of the necessary lands for and in the construction of a reservoir in the Catskill Mountains, and also in the acquisition of the necessary lands for and in the construction of an aqueduct ninety miles long for

the purpose of conducting the waters to be stored in said reservoir to its City limits.

As stated by the New York Court of Appeals in a recent case involving the construction of certain provisions of the statutes under which this great public work is being done:

> "The principal dam and reservoir consti-
> "tuting part of the new Catskill Mountain
> "Water Supply System for the City of New
> "York and commonly known as the Ashokan
> "Dam and Reservoir, is nearly completed. It
> "will occupy a territory of about fourteen
> "miles in length and about two miles in
> "width and will contain 15,221 acres of land.
> "• • • To make this vast reservoir possi-
> "ble it has been necessary to acquire by pur-
> "chase or condemnation not only such vast
> "area of land, but several hundred dwellings
> "and buildings, including shops, stores,
> "mills, schools and churches which were
> "standing thereon. It has resulted in remov-
> "ing from said territory about 2,000 in-
> "habitants who were living in the seven
> "villages and the scattered habitations
> "within its boundaries and all the estab-
> "lished and other businesses which were
> "theretofore conducted thereon."
>
> *Matter of Board of Water Supply*,
> 211 N. Y., 174, p. 182.

This gigantic undertaking is being done under the provisions of Chapter 724 of the New York Laws of 1905 as amended by Chapter 314 of the New York Laws of 1906 entitled:

> "AN ACT to provide for an additional sup-
> "ply of pure and wholesome water for the
> "City of New York; and for the acquisition
> "of lands or interests therein, and for the
> "construction of the necessary reservoirs,
> "dams, aqueducts, filters and other appur-

"tenances for that purpose; and for the ap-
"pointment of a commission with the powers
"and duties necessary and proper to attain
"these objects."

By Section 46 of that act it is provided:

"The City of New York shall have no
"power to acquire, take or condemn lands
"under this act unless maps and plans cover-
"ing the work contemplated by this act shall
"have been submitted to and approved by the
"State Water Supply Commission * * *."

The State Water Supply Commission was created by Chapter 723, New York Laws of 1905, and became a law the same day as Chapter 724.

Section 3 of Chapter 723 (which section is printed in full as an appendix to this brief), after making provision for application to the State Water Supply Commission by any municipal corporation, or other civil division of the State, for the approval of plans for a new or additional source of water supply, which plans must be accompanied by maps of the lands to be acquired, profiles showing sites and areas of proposed reservoirs and other works, profiles of the aqueduct lines and *a plan or scheme to determine and provide for the payment of any and all damages to persons or property whether direct or indirect;* for a hearing after public notice of all persons affected by such plans who should file objections to such application; for the approval, rejection or modification of the plans as submitted, provides:

"Whenever the commission shall make a
"decision on any application submitted to it
"by any municipal corporation or other civil
"division of the State it shall state the same
"in writing and sign the same and cause its

"official seal to be affixed thereto and file the "same, together with all plans, maps, sur- "veys or other papers or records relating "thereto in its office. The decision of the "commission *and its action on any applica-* "*tion may be reviewed by certiorari proceed-* "*ings.* * * *"

On November 3, 1905, The City of New York made application to the State Water Supply Commission for the approval of its maps and profiles for a Catskill Water Supply (Rec., p. 11), and on or about the 14th day of May, 1906, the State Water Supply Commission made and filed a decision in writing approving said application, maps and plans (Rec., p. 11).

In that decision, as stated by the New York Court of Appeals (*211 N. Y., 174, supra*),

"The commission refer to the amendment "of the statute in 1906 (*Chapter 314 of the* "*Laws of 1906, which became a law April 24,* "*1906, amending Chapter 724 of the Laws of* "*1905*) and say: 'The amendments were pre- " 'pared after consideration of the evidence " 'produced and arguments made by the at- " 'torneys representing the objectors upon " 'the hearing. Also after a personal inspec- " 'tion of some of the territory proposed to " 'be taken and the study of the laws of the " 'State of Massachusetts and the method " 'adopted by the Metropolitan Water Board " 'of that State having similar questions and " 'the *commission believes that the law as* " '*now amended makes fair and equitable* " '*provisions for the determination and pay-* " '*ment of any and all damages both direct* " '*and indirect which may result from the* " '*execution of said plans,* and that it also " 'protects New York from paying exorbitant " 'and improper damages.' "

Among the objectors to the plans of The City of New York, referred to by the State Water Supply Commission in its decision, was the Ramapo Water Company, the complainant herein, but no attempt was made by that Company, or by anyone else, to *review by certiorari proceedings*, as provided in Section 3 of Chapter 723, Laws of 1905, the decision of said State Water Supply Commission approving the plans of The City of New York and holding that provision was made for the determination and payment of all damages both direct and indirect which may result from the execution of said plans.

Nearly eight years after the State Water Supply Commission filed its decision, and over seven years after the City of New York had commenced proceedings thereunder, and after it had expended over $129,000,000. (Rec., p. 31), and incurred obligations aggregating many millions more, the Ramapo Water Company filed a bill in the United States District Court for the Southern District of New York to enjoin the completion of this great public work and to compel the removal or conveyance to the plaintiff of such dams, reservoirs, aqueducts and other structures as had already been erected by The City of New York, and for other different and general relief.

All parties to the suit are citizens of the State of New York, and federal jurisdiction was claimed solely on allegations which it is claimed show:

(1) That the Ramapo Water Company by its incorporation and organization and by making and filing maps, covering approximately one thousand square miles of land and water in certain counties of the State of New York, acquired a vested and ex-

clusive right and franchise to use for water supply purposes the lands and waters designated thereon.

(2) That The City of New York, under certain laws enacted by the Legislature of the State of New York, has acquired for water supply purposes lands and waters which are in a large part and to a great extent the same lands covered by and designated on the maps filed by the Ramapo Water Company, and that such laws of the State of New York, and the acquisition of said lands thereunder by the City of New York, impair the obligations of the plaintiff's contract with the State of New York in violation of Section 10, Article I of the Constitution of the United States and deprives it of its property without due process of law in violation of the Fourteenth Amendment of the Constitution of the United States.

The legal conclusion frequently asserted in the bill that by the filing of maps a contract was made between the plaintiff and the State of New York whereby the plaintiff acquired a vested and exclusive right and franchise to use the lands designated on such maps for water supply purposes, is stated in paragraph marked Eighteenth of the Bill of Complaint (Rec., p. 7) to be based on decisions of the Courts of the State of New York holding that such was the effect of filing maps under the provisions of the General Railroad Law.

The defendants all appeared and answered and then moved to dismiss the bill of complaint on the ground that it showed on its face that the suit did not involve any question arising under the Constitution or Laws of the United States.

The Court below sustained the motion and entered a decree dismissing the bill for want of jurisdiction (Rec., p. 38).

The District Court has certified to this Court the following question:

> "Does the Bill of Complaint in this suit "set forth a cause of action arising under the "Constitution of the United States so as to "give this Court jurisdiction of this suit not-"withstanding the lack of diversity of citi-"zenship?" (Rec., p. 42).

POINT I.

All parties to the suit are citizens of the State of New York, and unless the bill of complaint shows on its face some question arising under the Constitution or laws of the United States, the Court below was without jurisdiction and the bill was properly dismissed.

Metcalf vs. *Watertown*, 128 U. S., 586;

New Orleans vs. *New Orleans Water Works Co.*, 142 U. S., 79;

Defiance Water Company vs. *Defiance*, 191 U. S., 184;

Underground Railroad vs. *City of New York*, 193 U. S., 416;

Newburyport Water Company vs. *Newburyport*, 193 U. S., 561;

Devine vs. *Los Angeles*, 202 U. S., 313.

The rule is stated in *Metcalf* vs. *Watertown*, *supra*, as follows:

> "Where, however, the original jurisdiction "of a Circuit Court of the United States is

"invoked upon the sole ground that the de-
"termination of the suit depends upon some
"question of a federal nature, it must ap-
"pear, at the outset, from the declaration or
"the bill of the party suing, that the suit is
"of that character; in other words, it must
"appear, in that class of cases, that the suit
"was one of which the Circuit Court, at the
"time its jurisdiction is invoked, could prop-
"erly take cognizance. If it does not so ap-
"pear, then the court, upon demurrer or
"motion, or upon its own inspection of the
"pleadings, must dismiss the suit; just as it
"would remand to the State Court a suit
"which the record, at the time of removal,
"failed to show was within the jurisdiction
"of the Circuit Court."

In *New Orleans* vs. *New Orleans Water Works Company, supra,* this Court said at page 88:

"* * * we think that before we can be
"asked to determine whether a statute has
"impaired the obligation of a contract, *it*
"*should appear that there was a legal con-*
"*tract subject to impairment, and some*
"*ground to believe that it has been impaired;*
"and that to constitute a violation of the
"provision against depriving a person of his
"property without due process of law, *it*
"*should appear that the person has a prop-*
"*erty in the particular thing of which he is*
"*alleged to have been deprived.*"

In *Newburyport Water Co.* vs. *Newburyport, supra,* this Court said (p. 576):

"If jurisdiction is to be determined by the
"mere fact that the bill alleged constitu-
"tional questions there was, of course, juris-
"diction. But that is not the sole criterion.
"On the contrary *it is settled that jurisdic-*
"*tion does not arise simply because an aver-*
"*ment is made as to the existence of a con-*

> *"stitutional question,* if it plainly appears "that such averment is not real and substan- "tial, but is without color of merit. *Un- "derground Railroad* vs. *City of New York, "193 U. S., 416; Arbuckle* vs. *Blackburn, 191 "U. S., 405; Owensboro* vs. *Owensboro Water "Works Co., 191 U. S., 358; Defiance Water "Co.* vs. *Defiance, 191 U. S., 184.*"

In *Underground Railroad* vs. *City of New York, supra,* this Court in sustaining a decree of the Circuit Court dismissing a bill for want of jurisdiction, said (p. 430):

> "The result is that it appeared on the "record that the complainants possessed no "contract rights which were impaired or of "which they were deprived and that the suit "did not really and substantially involve a "dispute or controversy as to the applica- "tion or construction of the Constitution."

The appellant in its brief says that the decision in the *Underground Railroad case*

> "is entirely contrary to other decisions of "this Court" (p. 15);

that

> "it is contrary to the principles of the "numerous cases in which this Court has "said that whether or not there is a contract "is a question which this Court will deter- "mine for itself independent of the decisions "of the State Court" (p. 17);

that

> "In addition to these analogous cases, the "*Underground Railroad case* stands im- "pugned by several other cases originating "in the lower Federal Courts presenting "situations almost identical with those pre- "sented in the *Underground Railroad case* "and in the case at bar" (p. 17);

and, after citing several decisions of this Court, further says:

> "Although these later cases do not in "terms overrule or even refer to the decision "in the *Underground Railroad case,* it is "clear that they do in fact overrule that de- "cision" (p. 22).

It seems hardly necessary to say that the decisions cited have no bearing on the doctrine stated in the *Underground Railroad case.*

The appellant fails to distinguish between cases where the very subject matter of the suit was Federal—as clearly the subject matter of this suit is not—from cases which were like this suit, where a Federal question has been held to be presented in a controversy over subject matter not Federal.

The distinction is pointed out in *Swafford* vs. *Templeton,* 185 U. S., 487. In that case, the plaintiff in error had sued in the Circuit Court of the United States to recover damages against the defendants for preventing his voting for a member of the House of Representatives of the United States, and the suit was dismissed for want of jurisdiction. This Court reversed the judgment below, holding that there was jurisdiction, and saying (p. 493):

> "* * * the right which it was claimed had "been unlawfully invaded was one in the "very nature of things arising under the "Constitution and laws of the United States, "and that this inhered in the very substance "of the claim. It is obvious from an inspec- "tion of the certificate that the Court, "in dismissing for want of jurisdiction, was "controlled by what it deemed the want of "merit in the averments which were made in "the complaint as to the violation of the "Federal right. * * * True, it has been

"repeatedly held that, on error from a State "Court to this Court, where the Federal "question asserted to be contained in the "record is manifestly lacking all color of "merit, the writ of error should be dismissed. "(*New Orleans Water Works Co.* vs. *Lou-"isiana, ante,* 336, and authorities cited.) "This doctrine, however, relates to questions "arising on writs of error from State Courts "where, aside from the Federal status of the "parties to the action or the inherent nature "of the Federal right which is sought to be "vindicated, jurisdiction is to be determined "by ascertaining whether the record raises a "*bona fide* Federal question. In that class "of cases not only this Court may, but it is "its duty, to determine whether in truth and "in fact a Federal question arises on the "record. And it is true, also, as observed in "*New Orleans Water Works Co.* vs. *Lou-"isiana* (*supra*), that a similar prin-"ciple is applied in analogous cases originally "brought in a court of the United States "(*McCain* vs. *Des Moines*, 174 U. S., 168; "*St. Joseph & Grand Island R. R.* vs. *Steele*, "167 U. S., 659). But the doctrine referred "to has no application to a case brought in "a Federal Court where the very subject "matter of the controversy is Federal, how-"ever much wanting in merit may be the "averments which it is claimed establish the "violation of the Federal right. The distinc-"tion between the cases referred to and the "one at bar is that which must necessarily "exist between controversies concerning "rights which are created by the Constitu-"tion or laws of the United States, and "which consequently are in their essence "Federal and controversies concerning "rights not conferred by the Constitution or "laws of the United States, the contention "respecting which may or may not involve "a Federal question depending upon what is

> "the real issue to be decided or the substan-
> "tiality of the averments as to the
> "existence of the rights which it is claimed
> "are Federal in character. The distinction
> "finds apt illustration in the decisions of
> "this Court holding that suits brought by or
> "against corporations chartered by Congress
> "are *per se* of Federal cognizance."

It is obvious that the present case falls within the second subdivision of the definition stated in *Swafford* vs. *Templeton*,

> "the contention respecting which may or
> "may not involve a Federal question depend-
> "ing upon what is the real issue to be de-
> "cided or the substantiality of the averments
> "as to the existence of the rights which it is
> "claimed are Federal in character."

Before the Court below could retain jurisdiction, it had to find in the allegations of the bill a real and substantial Federal question, and we submit that the allegations in the bill neither establish a contract or present any genuine controversy as to the existence of a contract or property right.

POINT II.

The bill of complaint shows on its face that the plaintiff had no contract the obligation of which was impaired, nor any property of which it was deprived, by the legislation and acts complained of.

The plaintiff was incorporated in 1887 under Chapter 40, New York Laws of 1848, Chapter 85,

New York Laws of 1880 and Chapter 472, New York Laws of 1881.

Chapter 40, Laws of 1848, was known as the "Manufacturing Act" and provided for the formation of corporations for manufacturing, mining, mechanical and agricultural purposes.

That act provided in Section 2 that such corporations shall

> "* * * by their corporate name, be capable in law of purchasing, holding and conveying any real and personal estate whatever which may be necessary to enable the said company to carry on their operations,"

and in Section 19 that

> "The Legislature may at any time alter, amend or repeal this act, or may annul or repeal any corporation formed or created under this act * * *."

Chapter 85, Laws of 1880, was an act supplemental to Chapter 40, Laws of 1848, and extended the provisions of that act to companies organized

> "for the purpose of accumulating, storing, conducting, selling, furnishing and supplying water for mining, domestic, manufacturing, municipal and agricultural purposes."

There was no provision in either the Act of 1848 or the Act of 1880 by which a company organized thereunder *could acquire land by condemnation.*

Chapter 472, Laws of 1881, was entitled: "An Act to amend Chapter 85 of the Laws of 1880," and provided, among other things that,

> "Any corporation formed under this act for the purpose, among other things, of supplying cities with water, may acquire title to lands for the purposes of their busi-

> "ness, in the same manner specified and re-
> "quired in and by the act entitled 'An Act
> "to authorize the formation of railroad cor-
> "porations and to regulate the same,' passed
> "April 2, 1850, and the acts amendatory
> "thereof and supplemental thereto * * *."

It would seem to be self-evident that all this amendment of 1881 did was to extend to certain companies incorporated under Chapter 40, Laws of 1848, as supplemented by Chapter 85, Laws of 1880, the privilege of acquiring title to lands by condemnation in the manner prescribed by the General Railroad Act.

The General Railroad Act, Chapter 140, Laws of 1850, provided for the formation of companies for the purpose of constructing, maintaining and operating railroads for the public use in the conveyance of persons and property. It further provided in Section 1 that the articles of association should state *the place from and to which the route* is to be constructed or maintained and operated and the *length of the route;* the name of each county of the State through or in which it is to be made, and that the capital stock of the company should not be less than Ten thousand dollars ($10,000) for each mile of route constructed or proposed to be constructed.

In Section 2 it was provided:

> "Such articles of association shall not be
> "filed and recorded in the office of the secre-
> "tary of state, until at least one thousand
> "($1,000.) dollars of stock for every mile of
> "railroad proposed to be made is subscribed
> "thereto, and ten per cent. paid thereon in
> "good faith, and in cash, * * * nor until
> "there is endorsed thereon, or annexed there-
> "to, an affidavit made by at least three of the
> "directors named in said articles, that the
> "amount of stock required by this section

"has been in good faith subscribed, and ten "per cent. paid in cash thereon as aforesaid, "*and that it is intended in good faith to con-*"*struct or to maintain and operate the road* "*mentioned in such articles of association* "* * *."

In Section 13:

"In case any company formed under this "act is unable to agree for the purchase of "any estate required for the purpose of its "incorporation, it shall have the right to ac-"quire title to the same, in the manner and "by the proceedings prescribed by this act "* * *."

Elaborate provisions are then made (Sections 14-21) for the acquisition of the necessary lands by condemnation.

In Section 22 it was provided:

"Every company formed under this act, "before constructing any part of their road "into or through any county named in their "articles of association, shall make a map "and profile of the routine intended to be "adopted by such company in such county, "which shall be certified by the president "and engineer of the company, or a majority "of the directors, and filed in the office of "the clerk of the county in which the road is "to be made. The company shall give writ-"ten notice to all actual occupants of the "land over which the route of the road is so "designated, and which has not been pur-"chased or given to the company, of the "route so designated. Any party feeling ag-"grieved by the proposed location, may, "within fifteen days after receiving written "notice as aforesaid, apply to a justice of the "Supreme Court, out of court, by petition, "duly verified, setting forth his objections

> "to the route designated; and the said jus-
> "tice may, if he considers sufficient cause
> "therefor to exist, appoint three disinter-
> "ested persons, one of whom must be a prac-
> "tical engineer, commissioners to examine
> "the proposed route, and, after hearing the
> "parties to affirm or alter the same, as may
> "be consistent with the just rights of the par-
> "ties and the public; but no alteration of the
> "route shall be made, except by the concur-
> "rence of the commissioner who is a prac-
> "tical civil engineer. The determination of
> "the commissioners shall, within thirty days
> "after their appointment, be made and certi-
> "fied by them, and the certificate filed in the
> "office of the county clerk. * * *"

It will thus be seen that the railroad Act contains provisions very different from the act under which the plaintiff was incorporated, so that even if the Courts had decided that the effect of filing maps by a railroad company under the General Railroad Act was to give to such company a vested right and franchise to the exclusive use of the lands designated on such maps, it by no means follows that such would be the effect of filing maps under a law which simply permits another class of corporations to acquire property in the manner specified and required by the Railroad Act.

On June 7, 1890, the Legislature repealed all the laws under which the plaintiff was incorporated, and on June 11, 1895 enacted Chapter 985, Laws of 1895, entitled:

> "AN ACT to limit and define the powers and duties of the Ramapo Water Company".

That act provided in Section 1 that the Ramapo Water Company may acquire in the same manner specified and required by the General Railroad Act,

Chapter 140, Laws of 1850, such lands and waters along the watershed of the Ramapo, and such other watersheds and their tributaries, as may be suitable for the purpose of accumulating and storing the waters thereof, etc.; and in Section 2, after providing that the Company before constructing any part of its works or instituting any proceedings for the condemnation of real property shall make a map of the route adopted and land to be taken by it in any county in which it does business and file the same, that

> "Said corporation shall give written "notice to all actual occupants of land so "designated, and which have not been pur-"chased by or given to it, of the time and "place such map or maps were filed. * * * "*Said corporation shall not institute any "proceedings for the condemnation of real "property in any county until after the ex-"piration of fifteen days from the service by "it of the notice required by this section.*"

This act was repealed by Chapter 122, Laws of 1901.

As no claim is made that the Ramapo Company ever acquired, by purchase or condemnation, any of the property shown on its maps, and as it is conceded that

> "The Legislature of New York had at the "time in question full power to alter and re-"peal its statutes (Cons. of 1848, Art. 8, Sec. "1) and all charters (Rev. Stat., Sec. 8, Tit. "3, Chap. 18), and Sec. 19, of Chap. 40, Laws "of 1848, under which the complainant was "incorporated expressly reserved to the "Legislature the right to alter or repeal the "Act,"

and also

> "* * * that the general statutes, under "which the plaintiff was incorporated were "repealed on June 7, 1890 * * * and that "the Act of 1895, which was passed for the "plaintiff's benefit, was repealed in 1901" (Brief, pp. 81 and 82).

the only question that can possibly arise on this appeal is whether the plaintiff acquired any *vested rights* by the mere filing of maps.

The plaintiff alleges that it filed maps after its incorporation and before the repeal of the Acts under which it was incorporated, and after the passage of Chapter 985, Laws of 1895 (the Act limiting and defining the powers of the Ramapo Water Company), and before its repeal in 1901, and that at the time this was done the law as made by the decisions of the Court of Appeals was that such filing gave the plaintiff a vested right in the lands designated on such maps.

Admitting, therefore, that it did file the maps as alleged, the questions to be decided are:

FIRST: Did the Courts of the State of New York hold that the filing of maps by a railroad company under the Railroad Law gave such company a vested right to use the lands designated thereon?

SECOND: If the Courts did so hold, would such decisions have the same effect as to maps filed by a company incorporated under Chapter 40, Laws of 1848, and the Acts amendatory thereof, known as the "Manufacturing Act"?

THIRD: Would such decisions have the same effect as to maps filed by the Ramapo Water Company under Chapter 985, Laws of 1895?

The cases relied upon by the plaintiff are *Rochester, Hornellsville & Lackawanna R. R. Co.* vs. *New York, Lake Erie & Western R. R. Co.*, 110 N. Y., 128, and *Suburban Rapid Transit Company* vs. *Mayor, etc.*, 128 N. Y., 510, which are set forth in the plaintiff's brief, commencing at page 44.

In *R., H & L. R. R. Co.* vs. *N. Y., L. E. & W. Co.*, 110 N. Y., 128, the plaintiff had surveyed its proposed route, made a map of same, *served notice on all of the owners and occupants of the lands and no change in the route had been made*, so that its route was, under the statute, *actually located*.

The defendant, the New York, Lake Erie & Western Company, another railroad company, took a lease from the owner of some of the lands sought to be acquired by the plaintiff before proceedings had been commenced to condemn the same and constructed a switch from its tracks across the proposed route, and the Court, in upholding an injunction in favor of the plaintiff, among other things, said:

> "When, therefore, a corporation has made "and filed a map and survey of the line of "route it intends to adopt for the construc- "tion of its road, *and has given the required "notice to all persons affected by such con- "struction, and no change of route is made, "as the result of any proceeding instituted "by any landowner or occupant*, in our judg- "ment, it has acquired the right to construct "and operate a railroad upon such line; ex- "clusive in that respect as to all other rail- "road corporations and free from the inter- "ference of any party. By its proceedings "it has impressed upon the lands a lien in "favor of its right to construct, which ripens "into title through purchase or condemna- "tion proceedings. We could not hold other- "wise without introducing confusion in the

"execution of such corporate projects and "without violating the obvious intention of "the legislature."

In *S. R. T. Co.* vs. *Mayor,* 128 N. Y., 510, the principles of the decision in the above case were applied to the case of an elevated street passenger railroad created under the Rapid Transit Act, Chapter 606, Laws of 1875. It appeared there that by the resolutions of the Rapid Transit Commissioners as embodied in the Articles of Association, certain routes were *determined and located to which the necessary consents of the public authorities and of property owners were also obtained;* that subsequently by condemnation proceedings, under the statute, the company duly acquired the right to a strip through private lands over which one of the routes had been located; that afterwards the City of New York sought to take that particular land for the purpose of a public park. This it was held could not be done; and the Court further held that when the *route or routes had been located, with the consent of the municipal authorities and of the property owners* in the manner prescribed in the Rapid Transit Act of 1875, the property over which the line of such route ran was affected as fully for the purpose as it would be in a case where, under the General Railroad Act, a corporation had filed a map and survey of the line of route it intends to adopt for the construction of its road *and had given the required notice to all persons affected thereby.*

Leaving aside for the present the question as to just what the Court of Appeals did decide in those cases as to the effect of filing maps under the General Railroad Act, and assuming that the Court of Appeals decided as the plaintiff claims, let us take

up the second and third propositions, namely, would such decisions apply to maps filed by the plaintiff under the Manufacturing Act, Chapter 40 of the Laws of 1848, as amended, or under Chapter 985 of the Laws of 1895?

Chapter 985, Laws of 1895, entitled, "An Act to limit and define the powers of the Ramapo Water Company," provided in Section 1 that said company

> "may acquire in the same manner specified
> "and required by the act entitled 'An Act to
> "'authorize the formation of railroad cor-
> "'porations, and to regulate the same,
> "'passed April 2, 1850, and the Acts amend-
> "'atory thereof and supplemental thereto,'
> "such lands and water along the watershed
> "of the Ramapo and along such other water-
> "sheds and their tributaries as may be suit-
> "able for the purpose of accumulating and
> "storing the waters thereof, etc."

This provision is similar to that contained in the amendment, Chapter 472, Laws of 1881, of the General Law, under which the plaintiff was originally incorporated, namely:

> "Any corporations formed under this Act,
> "for the purpose, among other things, of sup-
> "plying cities with water, may acquire title
> "to lands for the purpose of their business
> "in the same manner specified and required
> "under and by the Act, entitled, 'An Act to
> "'authorize the formation of railroad corpo-
> "'rations and to regulate the same passed
> "'April 2, 1850, and the Acts amendatory
> "'thereof and supplemental thereto.'"

All that Section 1 of Chapter 985 of the Laws of 1895 did, or purported to do, was to give to the plaintiff the same right it and other corporations

formed "for the purpose, among other things, of supplying cities with water" had of acquiring lands by condemnation prior to the repeal in 1890 of the laws under which the plaintiff was incorporated. That provision did not carry the provisions of Section 22 of the General Railroad Act providing for the *location* of a route into either the "Manufacturing Act", under which the plaintiff was incorporated, or the "Ramapo Act". This is clear not only from the fact that under the Railroad Law, Articles of Incorporation were required to state the *place from and to which* the road was to be constructed, while there was no such provision in the Act under which the plaintiff was incorporated or the Acts amendatory thereof, and from the fact that if it had any such effect there would have been no necessity of the specific provision in Section 2 of Chapter 985 for the locating of a route by the Ramapo Water Company, but from the opinion of the Court of Appeals in the Matter of Poughkeepsie Bridge Company, 108 N. Y., 483.

In that case the Poughkeepsie Bridge Company had been created by a special Act which provided in Section 14:

> "The corporation hereby created, before "constructing any part of said bridge, its "appurtenances and avenues of approach, "shall make a map and profile of the same "as intended to be adopted, which shall be "certified by the president and engineer and "filed in the office of the state engineer and "surveyor and the offices of the county clerks "of the counties respectively in which the "same or any part of the same is to be made "or constructed."

And, in Section 13:

> "If the corporation hereby created shall "be unable to agree for any reason with the

> "owner or owners of any real estate required "for its purposes, as herein provided, for the "purchase thereof, *it shall have the right to "acquire the same in the manner and by the "like special proceedings as are authorized "and provided for, for the obtaining of title "to real estate required for the purposes of "a railroad corporation under the 14th sec- "tion of the Act entitled 'An Act to author- "ize the formation of railroad corporations "and to regulate the same,' passed April 2, "1850,* and the other sections of said Act "relative thereto, or any Acts amendatory "thereof or any addition thereto."

The Bridge Company claimed the right to change the approach to the bridge and condemn the necessary lands. The Court said, commencing at the bottom of page 493:

> "The second ground urged in behalf of the "bridge company to support this proceeding "rests upon what seems to us an erroneous "construction of Section 13 of the Charter. "It is insisted that this section incorporates "by reference into the Charter, not only Sec- "tion 14 of the General Act of 1850, and the "related sections prescribing the proceed- "ings to be taken to acquire title to lands "authorized to be taken for railroad pur- "poses, but also Section 23, which authorizes "corporations organized under that Act, to "change the route first selected under the "circumstances mentioned in the section, "and to make and file a new map, and which "also confers power to acquire title to lands "embraced in the altered or changed route "* * *. There is no express power given to "the bridge company by its charter to "change its approaches when once located, "and Section 23 of the General Railroad "Act, which confers the power upon railroad "corporations, cannot, upon any reasonable

> "construction, be regarded as incorporated "into the charter of the bridge company by "Section 13. *That section simply incorpo-"rates into the charter the sections of the "General Railroad Act which prescribed the "procedure for acquiring title to lands.* It "does not enable the company to relocate "a line when once located or to acquire lands "for such relocation. *Nor is the bridge com-"pany a railroad corporation.* It is a bridge "company, with power to construct a bridge "for the passage of railroad trains and as "an incident to this use to make approaches "and to lay rails thereon to adopt it to this "use."

The amendment of 1881, to the "Manufacturing Act," Chapter 40, Laws of 1848, under which the plaintiff was incorporated, was, as stated in *Matter of Union Ferry*, 98 N. Y., 139, at page 157:

> "A stereotyped form adopted in almost in-"numerable statutes, where the power of "eminent domain is intended to be delegated "to a corporation."

It follows, therefore, that no decision by the Courts of the State of New York as to the effect of filing maps by a railroad company under the Railroad Act can apply to maps filed by the plaintiff under Chapter 40, Laws of 1848, and the Acts amendatory thereof prior to their repeal in 1890.

The next question is, would such decisions apply to maps filed by the plaintiff under Chapter 985, Laws of 1895, prior to the repeal of that Act in 1901? Are the essential facts upon which the decisions of the Court of Appeals were based in the cases relied upon by the plaintiff alleged in the bill of plaintiff as to the maps filed by it under Chapter 985 or, for that matter, as to the maps filed by

it under the Acts under which it was incorporated, assuming that the provisions for the *location of a route* was embraced therein.

The bill of complaint alleges in paragraph 7 that the plaintiff made and filed maps. This was under the acts under which it was originally incorporated and before their repeal as set forth in paragraph 8. In paragraphs 13 and 14 it is alleged that the plaintiff continued to make and file maps between 1895 and 1899. This was subsequent to the enactment and prior to the repeal of Chapter 985, Laws of 1895. No other step is alleged in the bill of complaint to have been taken *thereafter*. But a route was not located under the General Railroad Law by the mere filing of a map. Such filing was but the first step looking toward such location.

In *Matter of Petition of L. I. R. R. Co.*, 45 N. Y., 364,

the Court said, at page 365:

> "Upon filing articles of association, in con-
> "formity with the provisions of the general
> "railroad act, a corporation is created, with
> "power to construct a railroad *between the*
> "*places and through the counties designated*
> "*therein. But the particular route of the*
> "*proposed road is not left to the discretion*
> "*of the corporation.* It is to be determined
> "by the proceedings and in the manner pre-
> "scribed in the twenty-second section of the
> "act.
>
> "The location of the route is, in its nature,
> "a proceeding preliminary to the acquisi-
> "tion of land therefor by appraisal and con-
> "demnation, and the *statute regulations*
> "*must be complied with before the route can*
> "*be located.*
>
> "*The filing of the profile and map, required*
> "*by that section is not the location of the*

> *"route, but the proposal of one, which may "or may not become the actual route, as shall "be determined by the subsequent proceed-"ings.*
>
> "It is obvious, from an examination of the "22nd section, that the leading objects of "that section were, first, *to give to each oc-"cupant of land through which the proposed "route passes an opportunity to object to "the intended location, and to be heard in "respect to such objection; and, second, to "constitute a special tribunal to determine "and fix the location, after hearing and con-"sidering the objections which may be "made."*

In *New York & Albany R. R. Co.* v. *New York, West Shore, etc. R. R. Co.*, 11 Abb. N. C., 365, the Court said, at page 397:

> "The general railroad act, while it per-"mits a railroad company to propose any "route which it chooses, by no means per-"mits the company, at its own pleasure, to "establish that route. The time for opposi-"tion is short, it is true, but the time is "given, and is secured to all who feel ag-"grieved. That time begins to run only "from actual service on the occupant. *It "is the consent of the parties evidenced by "neglect to apply after actual notice, or else "it is the legal adjudication which estab-"lishes the route. Not the mere filing of a "map which is a harmless act."*

Under the Railroad Law a railroad corporation could not institute a proceeding to condemn any of the land necessary for its route until fifteen days after notice of the filing of the map and profile of the route has been served *on all the owners and*

occupants of the land through which the route passes.

> *Matter of G. & J. R. Co.* vs. *G. & S. E. L. R. R.*, 75 A. D., 220 (aff'd 172 N. Y., 462),

and the Ramapo Act specifically provides in Section 2 that:

> "Said corporation *shall not institute any "proceedings for the condemnation of real "property in any county until after the ex- "piration of fifteen days from the service by "it of the notice required by this section.*"

It will be noted by a reference to the decisions in 110 and 128 N. Y., *supra*, relied upon by the plaintiff, that not only had maps been filed, *but notice had been served on the owners and occupants and no change in the route had been made as the result of any proceeding instituted by any land owner or occupant*—in other words *to a located route*. It follows, therefore, that if those decisions had the effect claimed by the plaintiff as to a *located route* and would have a like effect to a *route located* by the plaintiff, that they have no application to the case at bar because *no route had actually been located* as provided by Section 22 of the Railroad Act and by Section 2 of Chapter 985, Laws of 1895, the "Ramapo Act."

Furthermore, the plaintiff alleges that it was granted the exclusive right and privilege to use the lands designated on its maps for water supply purposes. If the plaintiff had actually located a route, and if the cases relied upon held what the plaintiff claims they hold, and if such decisions would have the same effect as to maps filed by the Ramapo Water Company, then chapter 985 of the laws of 1895, under which such exclusive right is claimed,

being a private act, would be unconstitutional. Article 3, section 18 of the Constitution of the State of New York, provides:

> "The legislature shall not pass a private "or local bill in any of the following "cases * * *
>
> * * * * *
>
> "granting to any private corporation, associ- "ation or individual any exclusive privilege, "immunity or franchise whatever."

This constitutional prohibition

> "was evidently aimed at monopolies. At "granting to corporations or individuals not "merely privileges and franchises not pos- "sessed by others, but the right to exclude "others from the exercise or enjoyment of "like privileges or franchises." *Matter of Union Ferry*, 98 N. Y., 139.

No other water company ever possessed the right to locate a route which would bring it under the decisions relied upon by the plaintiff, or if any other company ever had such right it was lost when the acts under which the plaintiff was incorporated were repealed, and according to the contention of the plaintiff it was the only company entitled, under the act limiting and defining the powers of the Ramapo Water Company, to plaster the whole State with maps and acquire a vested right thereunder.

Going back now to the first proposition, did the Courts of the State of New York hold that the filing of maps by a railroad company under the General Railroad Act gave the railroad company a vested right to use the lands designated thereon?

That the filing of maps under the General Railroad Act, known as Chapter 140 of the Laws of

1850, is not a contract and that no vested right is acquired thereby has been settled by the decisions of this Court and of the New York Court of Appeals in *People* vs. *Adirondack Railroad Company*, 160 N. Y., 225; In *Adirondack Railroad Company* vs. *New York*, 176 U. S., 335, and in *Underground Railroad* vs. *City of New York*, 193 U. S., 416.

In *People* vs. *Adirondack Railroad Company*, *supra*, a railway company made an effort to extend its line of railroad by filing its map and profile and serving notice on the occupants of certain lands, but before it took any further steps the land was appropriated by the Forestry Commission under the forestry legislation of the State. The railroad company claimed that by filing its map a lien was created over the land which was not affected by the subsequent proceedings of the Forestry Commission, and that it was entitled afterwards to complete its road in accordance with such map. The Court held that no such lien was acquired as against the State; that assuming that something in the nature of a lien was acquired by filing the map and profile, it was created by statute and not by contract, and could be done away with by the State without liability to make compensation *unless some vested right had accrued under it* (p. 243). The Court further held that no lien or any right in the nature of a lien could be acquired as against the State by the simple filing of a map by a corporation organized to construct a railroad.

> "As there is no language giving it that "effect, in the nature of things, the legisla- "ture did not intend to clothe the creature of "the State with the right to hold up the para- "mount power and compel it to pay money "for the bare filing of a map which is not the "commencement of condemnation proceed-

"ings. * * * The effect of the map when "filed was to give warning to other railroads "that a certain route had been previously "preempted by the defendant. It estab- "lished no right as against the owner, be- "cause the constitution forbids it, it estab- "lished none against the state because its "power is paramount, but as against all "other railroad companies * * * it gave "the exclusive right to occupy the particular "strip of land for railroad purposes *until the "legislature authorized it to be devoted to "some other public use.*

"The general language used in certain "cases relied upon by the defendant should "be read in the light of the facts then before "the court (*R. & H. & L. R. R. Co.* vs. *N. Y. "& L. E. & W. R. R. Co.*, 110 N. Y., 128; "*Suburban Rapid Transit Company* vs. "*Mayor, etc.*, 128 N. Y., 510).

"*These cases merely involved controver- "sies between corporations created by the "state as to a located line, the legislation "necessary to enable one corporation to con- "demn lands previously condemned by an- "other, and the like.* The state was not a "party to any of them, and the only question "was as to which corporation was ahead. "The so-called lien was simply an exclusive "right of one of two contending railroad "corporations as against the other to build "a road on a certain piece of land or of a "railroad corporation to hold land already "condemned for a public use as against a "city seeking to condemn it for another pub- "lic use *without special authority from the "legislature.* The general effect of filing a "map was not involved, but the particular "effect as between two corporations each try- "ing to get the same land. The paramount "right of the state to modify statutes before "vested rights had been acquired under them "was not involved. Here the question arises

> "between the state and one of its creatures, "and the claim that a lien good as against "the creator of the corporation was placed "upon the land simply by the granting of a "franchise to exist as the corporation in "order to build a road, followed by the filing "of a map of the proposed route and notice "thereof to occupants, but by nothing else, "cannot be sustained. *There is no property "in a naked railroad route existing on paper "only, that the state is obliged to pay for "when it needs the land covered by that route "for a great public use and its officers are au- "thorized to act by proper legislation.*"

It would be difficult for words to show more clearly than those quoted that the Court of Appeals did not hold, and had no intention of holding, that the filing of a map by a railroad company was a contract, or that it gave a vested right in the lands designated thereon which survived the right to condemn and which were paramount to the right to repeal. All that was held in the cases in 110 and 128 N. Y., relied upon by the plaintiff was that as between two railroad companies' priority of time in filing a map gave priority of right, and that property taken for one public use could not be taken for another *without special authority.*

In *Adirondack Railroad Company* vs. *New York, supra,* the judgment of the Court of Appeals of the State of New York in the above case was reviewed by this Court. This Court said, at page 344:

> "Undoubtedly the power to amend or re- "peal cannot be availed of to take away "property already acquired or to deprive a "corporation of the fruits *already reduced "to possession* of contracts lawfully made. "But the capacity to acquire land by con- "demnation for the construction of a rail-

"road attends the franchise to be a railroad "corporation, and when unexecuted cannot "be held to be in itself a vested right sur- "viving the existence of the franchise, or an "authorized circumspection of its scope. (*People* vs. *Cook*, 148 U. S., 397; *Pearsall* vs. *Great Northern Ry. Co.*, 161 U. S., 646; *Bank of Commerce* vs. *Tennessee*, 163 U. S., 416.) * * *

"But it is said by the filing of the map "across township fifteen and the service of "its notice, the railroad company so far ex- "erted its capacity to extend and construct "as to secure rights on the strip of land "which could not be taken at all, or if so, "not without compensation. * * * The "Court of Appeals held that assuming that "the filing of a map created a lien or some- "thing in the nature of a lien as this was "by statute, and not by contract, it could "be done away with by statute and without "liability to make compensation unless some "vested right had accrued under it. * * *

"In arriving at this conclusion the Court "of Appeals was considering and applying "the laws of the State of New York, and we "perceive no adequate ground for declining "to accept its views in accordance with the "general rule on that subject. *In any view "we think that the proceedings on the part "of the State impaired the obligation of no "contract between it and the railroad com- "pany.* We agree with the Court of Appeals "as has already been indicated, that the rail- "road company occupies no position to raise "this question. *The steps it had taken had "not culminated in the acquisition of any "property, or vested right, and no contract "between it and the State was impaired, nor "was due process of law denied to it within "the meaning of the Constitution of the "United States.*"

In *Underground Railroad* vs. *City of New York, supra*, a bill of complaint had been filed in the Circuit Court for the Southern District of New York, alleging that the underground Railroad of the State of New York, one of the complainants, was formed by the consolidation of the Central Tunnel Railway Company, of New York and two other companies; that the Central Tunnel Railway Company was organized under the General Railroad Act, Chapter 140, Laws of 1850; that on March 28, 1882, a map and profile of the route adopted by said corporation was duly signed and certified, and filed in the office of the Register of the County of New York, and that written notice was given to all the occupants of the land; that the route and line of said corporation was duly surveyed, costly plans and estimates and specifications for its construction made, more than One Hundred Thousand ($100,000.) Dollars expended in surveying, preparing plans and specifications, and that the Central Tunnel Railway Company had thereby acquired a vested and exclusive easement for the construction of a tunnel and underground railroad over the route specified. The bill asked for a perpetual injunction against the City of New York, The Mayor, the Comptroller, the Rapid Transit Commissioners and the contractors engaged in the construction of an underground railway.

The defendants demurred to the bill of complaint, and the Circuit Court dismissed the bill on the ground that no Federal Question was involved (116 Fed. Rep., 952).

The following questions were then certified to the Supreme Court of the United States:

> "(1) When the Circuit Court of the "United States decides that the complainant "to a bill of equity brought to enforce an "alleged right, which he claims arises under "the constitution of the United States, "shows no right arising under the constitu- "tion of the United States, has said court "jurisdiction to decide and hear and deter- "mine other matters of equitable cogni- "zance, pleaded in said bill which did not "arise under the constitution of the United "States or a statute or treaty thereof, if "the complainants are citizens of the same "State.
>
> "(2) *Has this Court (Circuit Court) "jurisdiction of the said amended bill in "equity?*"

This Court said, at page 428:

> "The General Railroad Law of 1850 pro- "vided for the filing of a map and profile of "the proposed route, and this was done by "the Central Tunnel Company, March 28, "1882, and the bill claims that thereby the "company obtained a contract right. But "the mere filing of a map and profile by a "company incorporated under that law "could not give an exclusive right to the "occupancy of the space included in such "map and profile as against the State. In "some instances, it might give priority as "between railroad corporations whose cor- "porate existence had not lapsed for non- "construction, *but only until the legislature "otherwise provided.* And so it was held "in *People* vs. *Adirondack Ry. Co.,* 160 "N. Y., 225, where, among other things, it "was observed 'there is no property in a

"'naked railroad route, existing on paper
"'only, that the State is obliged to pay for
"'when it needs the lands covered by that
"'route for a great public use, and its offi-
"'cers are authorized to act by appropriate
"'legislation.' The judgment was affirmed
"by this Court in *Adirondack Railroad Co.*
"vs. *State of New York*, 176 U. S., 335, and
"we said, 'but the capacity to acquire land
"'by condemnation for the construction
"'of a railroad cannot be held to be in itself
"'a vested right, surviving the existence of
"'the franchise, or an authorized circum-
"'spection of its scope. We agree with the
"'Court of Appeals as has already been in-
"'dicated, the railroad company occupies no
"'position entitling it to raise the question.
"'The steps it has taken had not culminated
"'in the acquisition of any property or
"'vested right.' * * * The result is
"that it appeared on the record, that com-
"plainants possessed no contract rights
"which were impaired or of which they were
"deprived, and that the suit did not really
"and substantially involve a dispute or con-
"troversy as to the application or construc-
"tion of the constitution."

The only claim asserted by the plaintiff in the case at bar is that by filing maps covering one thousand square miles of land and water it acquired a vested right in such lands and water of which the State could not deprive it by repealing the acts under which it was authorized to condemn such lands before it had actually done so, or had even complied with the essential requirements of the statute necessary to enable it to commence a condemnation proceeding. Carried to its logical conclusion the contention is that all the plaintiff had to do to acquire a vested and exclusive right to the

use of all of the lands in the State available for water supply purposes was to plaster the whole State with maps before the laws under which it was incorporated were repealed, and sit down and collect tribute from every municipality that needed any of such lands for water supply purposes, and was proceeding to condemn them under authority of the Legislature.

The plaintiff has attempted to distinguish the *Adirondack case* from the case at bar and asserts as to that case "that at the time the defendant (railroad company) filed its map in 1897 the land in controversy was already devoted by the State to a public use inconsistent with its use for railroad purposes" (Brief, p. 66).

It is sufficient here to say that such was not the fact. The facts are correctly stated in paragraph 2 of the syllabus, 160 N. Y., 225:

> "Where the special condemnation proceed-
> "ings prescribed by the Adirondack Park Act
> "of 1897 instituted, under that act, by the
> "forest preserve board, against lands of a
> "private owner within the territory of the
> "Adirondack Park, were fully complied with
> "by service of the certificate of condemna-
> "tion on the owner, before the Adirondack
> "Railroad Company, *which had previously*
> *"filed a map and profile for an extension*
> *"of its route through the same lands,* com-
> "menced condemnation proceedings on its
> "part, the title to the strip of land desig-
> "nated for the route of the railroad passed to
> "the state at the moment of the completion
> "of its condemnation proceedings, the land
> "then became a part of the forest preserve
> "and thereupon a provision of the Constitu-
> "tion of the state that lands constituting the
> "forest preserve shall not be 'taken by any

"'corporation, public or private, intervened
"'against the railway company, and the act
"'of 1897 being a valid and binding law.'"

A concise statement of the case was also given by PARKER, *P. J.*, in the opinion of the Court in 39 A. D., 35:

"The defendant had acquired from the "State a franchise to build and operate its "road through the counties and region which "the state subsequently, by the act of 1895, "provided might be acquired for the pur- "poses of the 'Adirondack Park.'

"Under the franchise so acquired, the de- "fendant was proceeding to extend its route "through such counties, and to that end on "the 18th of September, 1897, *filed in the "several counties in question a map and pro- "file of its proposed route, and at once gave "the requisite notice to the owners of the "lands through which it passed. Such pro- "posed route has never been changed.*

"At that time the State had not acquired "any interest in the strip of land so located. "There is no claim that it had either acquired "a conveyance of, or taken any proceedings "to condemn, such strip prior to that date."

If the filing of a map by a railroad company and the service of notice on the owners and occupants, in other words, *the locating* under the law, of a proposed route, gave the railroad company any *vested right* in the lands covered by such route, the State could not deprive the railroad company of that vested right for its own use without compensation any more than a corporation to whom the power of eminent domain is delegated could take

vested rights without the payment of compensation.

The constitutional limitation is:

> "* * * Nor shall private property be "taken for public use without just compensa- "tion."
>
> *N. Y. Constitution,* Art. I, par. 6.

not, as the argument of the plaintiff (p. 74) would indicate, that private property shall not be taken for public use by any *"creatures of the State,"* without just compensation.

The plaintiff also says (p. 76):

> "If, however, we are in error as to the "meaning and effect of the decision in the "*Adirondack case*, if our conception as to "what the Court there decided be erroneous, "if that decision be authority for the propo- "sition that the plaintiff's acts were inef- "fectual and did not vest in it a right and "franchise to utilize for its corporate pur- "poses the lands and waters covered by its "maps, then that decision has effected *a "radical change in the law of the State* as "such law had been theretofore announced "and declared; and for this reason it should "not and cannot be followed by this Court in "its determination of this case."

Several cases are cited to support this proposition, the principal one being *Muhlker* vs. *New York & H. R. Co.*, 197 U. S., 544.

But, as stated by this Court in *Sauer* vs. *New York*, 206 U. S., 536, where it was contended that the Act under which a viaduct was constructed in 155th Street in New York City and which made no provision for damages to the owners of abutting

land, impaired the obligations of a contract in violation of Section 10, Article I of the Constitution of the United States.

> "If the facts upon which this claim is "based are accurately stated, then the case "comes within the authority of *Muhlker* vs. "*Railroad Company*, 197 U. S., 544, which "holds that when the Court of Appeals has "once interpreted a *contract* existing be- "tween the land owner and the City that in- "terpretation becomes a part of the contract "upon which one acquiring land may rely, "and that any subsequent change of it to "his injury impairs the obligation of the "contract. *It will be observed that it is an "essential part of the plaintiff's case that he "should show that his contract has been "interpreted in the manner he states. It "therefore becomes necessary to examine the "Story case, wherein he asserts such inter- "pretation was made. In order to ascertain "precisely what that case decided we may "consider other decisions of the Court of "Appeals, though they are later in time.*"

So here, it is not only an essential part of the plaintiff's case for him to show that his alleged contract has been interpreted in the manner he claims, but it is essential for him to show in the first place that he had a contract, and in order to ascertain precisely what the Court of Appeals held in the cases relied upon by the plaintiff in 110 and 128 N. Y., *supra*, we may consider the decision of the New York Court of Appeals in the Adirondack case, though it is later in time. The plaintiff in his argument, therefore, is assuming as true the very things as to which the Adirondack case, as

affirmed by this Court, is *stare decisis* to the contrary.

The plaintiff has also undertaken to distinguish the *Underground Railroad case* from the case at bar on the ground that the *Underground* Railroad was required by the existing laws to obtain the consent of the abutting property owners and of the municipal authorities which it had not done and that:

> "It was thus apparent upon the face of "the bill that the plaintiff there had not "complied with the plain requirements of "the constitution and the statutes under "which it claimed to derive its rights, and "consequently by the express terms of these "laws, had never acquired the right to utilize "its proposed routes for railroad purposes" (Brief, p. 62).

It has heretofore been shown that the cases relied upon by the plaintiff refer only to a *located route* by a railroad company and that if those decisions would apply to a located route by the Ramapo Water Company, *no route had actually been located*, which was a necessary condition precedent to the application of those decisions. The service of notice on the owners and occupants and

> *"an opportunity to object to the intended lo- "cation, and be heard in respect to such "objection."*

was just as essential a requirement of the General Railroad Act and the Ramapo Act here under consideration to acquire the right to utilize a proposed route as the consent of the municipal authorities

to use the streets of the City in the *Underground Railroad case.*

But, as a matter of fact, the decision of this Court was not based on that point. In both *Adirondack Railroad Company* vs. *New York,* 176 U. S. 335, affirming the judgment of the Court of Appeals of the State of New York, and *Underground Railroad* vs. *City of New York,* 193 U. S. 416, affirming the Circuit Court for the Southern District of New York, this Court held that even as to a *located* route by a railroad that the *"steps it had taken had not culminated in the acquisition of any property or vested right"* and that such companies possessed no contract rights which were impaired. *A fortiori* the same is true as to the steps taken by the plaintiff in the case at bar where assuming it had authority to locate a route *none had actually been located.*

POINT III.

Chapter 724 of the Laws of 1905 makes ample provision for the ascertainment and payment of compensation to every owner or person interested in any lands taken by The City of New York under that Act.

The Act provides for the making of "surveys, maps, plans, specifications, estimates and investigations" by the Board of Water Supply of The City of New York, of the most available and de-

sirable sources for an additional supply of water for The City of New York (Section 2); for public hearing on notice before the adoption of the final map or plan (Section 3); for the application to the Supreme Court for the appointment of Commissioners of Appraisal after public notice by publication and posting (Sections 7 and 8); for the appointment of "Commissioners of Appraisal to ascertain and appraise the compensation to be made to the owners and all persons interested in the real estate laid down on said maps, etc.," (Section 9); that the Commissioners shall view the real estate laid down on said maps and shall hear the proofs and allegations of any owner, lessee, or other person in any way entitled to or interested in said real estate, or any part or parcel thereof * * * and shall without unnecessary delay, ascertain and determine the just and equitable compensation which ought justly to be made by The City of New York to the owners or the persons interested in the real estate sought to be acquired or affected by said proceeding * * *." (Section 12); for the payment by The City of New York within three calendar months after the confirmation of a report of the sums awarded by the Commissioners with lawful interest thereon (Section 17); that every owner or person in any way interested in any real estate taken or in any real estate contiguous thereto which may be affected, if he intends to make claim for compensation, must do so within three years after the appointment of the Commissioners of Appraisal (Section 19).

The bill of complaint does not allege that the plaintiff was the owner of a single foot of land

taken by the City of New York under Chapter 724, Laws of 1905, but if it was the owner of any such lands, as that act provides for the taking of property in a due and orderly manner and makes adequate provision for the ascertainment upon notice and hearing of compensation for all damages, direct or indirect, there is no lack of due process of law.

In *Backus* vs. *Fourth Street Union Depot Co.*, 169 U. S., 557, this Court said:

> "All that was essential is, that in some "prescribed way, before some properly con- "stituted tribunal, inquiry shall be made as "to the amount of compensation, and when "this has been provided, there is that due "process of law which is required by the "Federal Constitution."

See also *Appleby* vs. *Buffalo*, 221 U. S., 524.

POINT IV.

The decree should be affirmed and the certified question answered in the negative.

Dated February 16, 1915.

Respectfully submitted,
FRANK L. POLK,
Corporation Counsel,
Solicitor for the Appellees.

LOUIS C. WHITE,
Of Counsel.

Appendix.

Laws of 1905, Chapter 723.

AN ACT to establish a state water commission, to define its powers and duties, and making an appropriation therefor.

Became a law, June 3, 1905, with the approval of the Governor. Passed, three-fifths being present.

Sec. 3. Any municipal corporation or other civil division of the state may make application by petition in writing to the said commission for the approval of its maps and profiles of such new or additional source or sources of water supply for such municipal corporation or other civil division of the state. Such application shall be accompanied by an exhibit of maps of the lands to be acquired and profiles thereof showing the sites and areas of the proposed reservoirs and other works, the profiles of the aqueduct lines and the flow lines of the water when impounded, plans and surveys and abstract of official reports relating to the same, showing the need of such municipal corporation for a particular source or sources of supply and the reasons therefor, and shall be accompanied by a plan or scheme to determine and provide for the payment of the proper compensation for any and all damages to persons or property, whether direct or indirect, which will result from the acquiring of said lands and the execution of said plans. Said commission shall thereupon cause public notice to be given that on a day therein named the commission will meet at its office in the city of Albany, or at such other place as it may particularly specify in said notice, for the purpose of hearing all persons, municipal corporations or other civil divisions of the state that may be af-

fected thereby. Such notice shall be published in such newspapers and for such length of time, not exceeding four weeks, as the commission shall determine. At any time prior to the day specified in such notice any person or municipal corporation or the proper authorities of any civil division of the state may file in the office of the commission at Albany objections to the project proposed by such application. Every objection so filed shall particularly specify the ground thereof. Said commission shall, upon the day specified in said notice, or upon such subsequent day or days to which it may adjourn the hearing, proceed to examine the said maps and profiles and to hear the proofs and arguments submitted in support and in opposition to the proposed project, but no person, municipal corporation or local authorities shall be heard in opposition thereto except on objections filed as authorized by this section. The commission shall determine whether the plans proposed by such municipal corporation or other civil division of the state are justified by public necessity, and whether such plans are just and equitable to the other municipalities and civil divisions of the state affected thereby and to the inhabitants thereof, particular consideration being given to their present and future necessities for sources of water supply, and *whether said plans make fair and equitable provisions for the determination and payment of any and all damages to persons and property, both direct and indirect, which will result from the execution of said plans.* Said commission shall within ninety days after the final hearing and with all convenient speed, either approve such application as presented or with such modifications in the plans submitted as it may deem necessary to protect the water supply and the in-

terest of any other municipal corporation, or other civil division of the state, or the inhabitants thereof, or to bring into co-operation all municipal corporations, or other civil divisions of the state, which may be affected thereby. Or it may reject the application entirely or permit another to be filed in lieu thereof, but it shall, however, make a reasonable effort to meet the needs of the applicant, with due regard to the actual or prospective needs and interests of all other municipal corporations and civil divisions of the state affected thereby and the inhabitants thereof. Whenever the commission shall make a decision on any application submitted to it by any municipal corporation or other civil division of the state it shall state the same in writing and sign the same and cause its official seal to be affixed thereto and file the same, together with all plans, maps, surveys and other papers or records relating thereto in its office. *The decision of the commission and its action on any application may be reviewed by certiorari proceedings.* The expense of any such hearing and determination by the commission shall be certified by said commission to the municipal corporation or other civil division of the state making such application and shall be paid by said municipal corporation or other civil division of the state to the state treasurer within thirty days thereafter.

The foregoing section was amended by the Laws of 1906, *chapter* 415, *section* 3.

This section is section 7, *article* 2 *of the State Boards and Commissions Laws. Chapter* 56 *of the Laws of* 1909. *Consolidated Laws.*